VOLUME 13 PART 6—Pages 81-96

THE AUSTRALIAN LAWYER

being the
Thirteenth Volume of The
Australian Conveyancer and Solicitors Journal

JUNE 1960

BUTTERWORTH & CO. (AUSTRALIA) LTD.
(Incorporated in England)
SYDNEY: 6-8 O'Connell Street
MELBOURNE: 430 Bourke Street :: 240 Queen Street, BRISBANE

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THE NEW SOUTH WALES CONVEYANCING (STRATA TITLES) BILL 1959

by

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The unprecedented large scale construction of home unit buildings in Sydney since 1957, which has reached "boom" proportions in the year 1960, led to a demand from lawyers, builders, estate agents, and financial institutions for legislation dealing with unit titles in a modern and systematic manner. The result was the introduction in the New South Wales Legislative Assembly in 1959 of the *Conveyancing* (*Strata Titles*) *Bill* 1959.[1] The Bill has passed a first reading, and a second reading was deferred to enable further examination to be made by interested persons and in order to obtain further comment and criticism.

Probably, the main purpose of the Bill was to overcome the reluctance of banks and other lending agencies to advance money to purchasers of home units. Up to the present time, the practice in New South Wales has been to confer title to occupation of home units apartments, through the medium of allotment or transfer of groups of numbered shares, representing the capital of a limited company in which the fee simple of the whole home unit property is vested. Under such a system, of course, purchasers of home units obtained no title to the unit as such, but only to a group of shares, with ancillary rights of occupation of the unit corresponding to the group. Some, but only a minority of, financial institutions were willing to lend upon the security of such shares.

The practice of home unit company shares was conditioned partly by New South Wales conveyancing and survey practice, according to which lots in a subdivision were defined by two-dimensional survey of land parcels and not otherwise, and partly by doubts as to title legally applying to a portion of the superjacent airspace, corresponding to the particular home unit apartment. Perhaps the difficulties were not so insuperable in this connexion, as witness the general practice in New South Wales of leases of flats, in effect, of a portion of space defined by walls, floors, and ceilings.

[1] See A. F. Rath, "Strata Titles in New South Wales", *Sydney Law Review* Volume 3 (1960) n.2, for note on the history of the various drafts of the Bill.

Australian Conveyancer and Solicitors Journal, June, 1960.

The new Bill is not, however, limited in its scope to the definition and establishment of title to home unit apartments. First, it deals with all types of units in buildings, whether home unit apartments or office units or otherwise, grouping them under the denomination of "lots" comprised in "strata". The term "stratum" is not defined in Clause 2, the interpretation clause of the Bill, but having regard to the long title of the Bill ("A Bill to facilitate the subdivision of land in strata and the disposition of titles thereto; and for purposes connected therewith") and to the definition of "strata plan", it is intended to denote a subdivided portion of airspace above a particular parcel of land on which is erected a building of several floors. Second, the Bill is drafted as a comprehensive piece of legislation designed to cover all possible practical aspects of unit titles, including questions of mutual easements, the management of the building, insurance, valuation, rates and taxes, and destruction or damage, in part or wholly, of or to the building.

There are two basic elements in the scheme of the Bill:

(1) That the subdivision into strata and into the lots therein comprised depends upon registration in the Land Titles Office of a "strata plan".

(2) The conception of "unit entitlement" of each lot comprised in the "strata".

The requirements of a strata plan are set out in Clause 5. As these requirements are imperative (note the word "shall"), presumably a strata plan which does not fulfil them would not be accepted for registration in the Land Titles Office. The strata plan must delineate the external surface boundaries of the parcel of land on which the building is erected and the location of the building in relation thereto, set out particulars necessary to identify the title to such parcel, include a drawing illustrating the lots and distinguishing these units by numbers or other symbols, *define the boundaries of each lot in the building by reference to floors, walls, and ceilings*, but without showing any bearing or dimensions of a lot, show the approximate floor area of each lot, and be endorsed with a schedule showing the "unit entitlement" of each lot (see *post*).

It is provided in sub-clause (2) of Clause 5 that unless otherwise stipulated in the strata plan, the common boundary of any lot with another lot or with parts of the building other than lots (i.e., with the "common property") shall be the centre of the floor, wall, or ceiling, as the case may be. The object of this provision is to facilitate definition of lot boundaries.

Every strata plan lodged for registration must be endorsed with or accompanied by three kinds of certificates. First, there must be a certificate of a registered surveyor that the building shown on the strata plan is within the external surface boundaries of the title stated in the plan. Second, the town clerk or shire clerk of the local municipal or shire council must certify that the proposed subdivision, illustrated in the strata plan, has been approved by the council concerned. Third, there must be a certificate of compliance, in respect of the building, in pursuance of the provisions of s. 317A of the *Local Government Act* 1919, as amended.

The requirement of a council certificate of approval brings every strata plan under the cognizance of municipal or shire authorities. However, the grounds upon which any council may refuse a certificate of approval are in effect limited to two: (a) that the proposed subdivision will contravene the provisions of any prescribed scheme under Part XIIA of the *Local Government Act* 1919 as amended, or any consent or approval necessary under such prescribed scheme has not been given; and (b) that it will interfere with some existing or likely future amenity of the neighbourhood. Moreover, an appeal lies to the Land and Valuation Court from any refusal by a council to direct the issue of a certificate of approval.

The strata plan is in effect the survey plan for the proposed subdivision, but it is something more. It is a condition precedent of title, in the sense of title by way of property, being acquired in respect of any unit in a building.

It may be noted that the conception of "unit entitlement" is directly associated with the strata plan. As already mentioned, every strata plan must be endorsed with a schedule showing the "unit entitlement" of each lot, i.e., the value of each lot as a proportion of the value of the whole building. This "unit entitlement" henceforth governs the voting rights of the owners of lots, the proportion payable by each owner of levies for expenses of administering and managing the building, and the *quantum* of the undivided share of each owner of a lot in the common property (see Clause 10 providing that the common property shall be held by the owners of lots as tenants in common in shares proportional to the unit entitlement of each lot).

Registration of the strata plan represents the confirmation of the number and location of the lots, and of the "unit entitlement" of each lot. Thereupon, any lot may devolve or be conveyed, transferred, leased, mortgaged, or otherwise dealt with in the same manner and form as any

land held under the Old System title, or under the provisions of the *Real Property Act* 1900, as amended. Also, upon such registration, the owners of the lots are to constitute a body corporate, responsible for the management and administration of the building, with power to sue and be sued, including power to sue and be sued on any contract, or to sue for and in respect of any damage or injury to the common property of the building. The by-laws, according to which the corporate body acts, are set out in the First Schedule to the Bill, which provides, *inter alia*, for a council to carry out the functions of the body corporate, for the specific duties in relation to control and maintenance of the building by the corporate body, and for the conduct of proceedings at general meetings of lot owners. Under a Second Schedule to the Bill, each lot owner is prohibited from using his lot for any purpose which may be illegal or injurious to the reputation of the building, from making undue noise in or about any lot or common property, and from keeping any animals on his lot or the common property after notice to the contrary from the council of the body corporate.

The by-laws in the First Schedule cannot be altered except by unanimous resolution of all lot owners, whereas the by-laws in the Second Schedule may be added to, amended, or repealed by the body corporate. There is one fundamental limitation on the right by unanimous resolution, or otherwise, to add to, or amend or repeal the by-laws; it is provided by sub-clause (3) of Clause 14 of the Bill that "no addition to or amendment or repeal of any by-law shall be capable of operating to prohibit or restrict the assignment or devolution of lots or to destroy or modify any easement" implied by the Bill.

The interposition of the body corporate and of the by-laws, as part of the scheme of strata titles, must inevitably raise some doubts in the minds of practitioners, with actual experience of the present practice of home unit companies, as the current method of dealing in units. Just as purchasers require some assurances about changes or additions to the Articles of Association of home unit companies, so, no doubt, purchasers of strata titles will want some security against alteration of or addition to the by-laws, especially where the original subdivider and/or nominees have power to change the by-laws between registration of the strata plan and the date of completion of the sale of a lot. Provision ought to be made for registration of any changes or additions to the by-laws, with the strata plan, so that these are available for inspection by purchasers or their solicitors.

Clauses 6 to 8 of the Bill make provision for mutual easements and rights as between different lots, including easements of support of shelter, and for the passage of water, sewerage, drainage, gas, electricity, etc., and for further assurance it is laid down in Clause 9 that —

> "all ancillary rights and obligations reasonably necessary to make easements effective shall apply in respect to easements implied by this Act."

An important conception in the Bill is that of the "common property" of the land and building concerned. "Common property" is defined to mean so much comprised in a strata plan as is not included in any lot shown on the plan. Each lot owner is to be tenant in common of the common property in a share proportional to his "unit entitlement". Where the land is under the *Real Property Act* 1900, as amended, the Registrar-General is to issue a certificate of title for a lot, certifying therein the share of the lot owner in the common property. The general transfer or disposition of the common property is restricted. No share in the common property is to be disposed of except as appurtenant to the lot of a lot owner, but the lot owners may by unanimous resolution direct the body corporate to transfer or convey the common property. On the other hand, any conveyance or transfer of a lot will operate to dispose of the share of the disposing party in the common property, without express reference thereto (see Clause 11 (1)).

It remains to consider the following practical matters which are dealt with by the Bill:—

(a) Insurance.

(b) Destruction, in whole or in part, of the building, and its obsolescence, or damage thereto.

(c) Appointment of an administrator to safeguard against malfeasance or neglect on the part of the body corporate.

(d) Valuation of, and rates and taxes applicable to strata lots.

(e) Voting rights of mortgagees.

These may be dealt with, each in turn.

(a) Insurance

Where a building has been insured to its replacement value, a lot owner may effect a policy of insurance in respect of any damage to his lot in a sum equal to the amount secured by mortgages charged upon his lot. Payment is to be made by the insurer under such a policy to the mortgagees whose interests are noted thereon in order

of their respective priorities. Where the amount paid by the insurer equals the amount necessary to discharge a mortgage charged upon the lot, the insurer is to be entitled to an assignment of the mortgage. Where the amount paid by the insurer is less than the amount necessary to discharge a mortgage charged upon the lot, the insurer is to be entitled to a sub-mortgage of such mortgage to secure the amount so paid, on terms and conditions as provided in Clause 17. In the same Clause, there are special provisions enabling a lot owner to obtain adequate insurance for his individual interest, where the building is uninsured, or is insured to less than its replacement value (see subclause (2) (a)). The provisions generally of Clause 17 obviate any possibility of an unscrupulous lot owner seeking the benefits of "double insurance", but enable all lot owners to cover themselves adequately against risks.

(b) Destruction or obsolescence of or damage to the building

For the purposes of the Act, the building is destroyed or deemed destroyed when the lot owners by unanimous resolution so decide, or the Court is satisfied that, having regard to the rights and interests of the proprietors as a whole, it is "just and equitable" that the building be deemed destroyed, and it so declares. When the Court makes such a declaration, it may impose such conditions and give such directions, including directions for the payment of money, as it thinks fit for the purpose of adjusting as between the body corporate and the lot owners, and the lot owners, *inter se*, the effect of the declaration.

Where the building is damaged, but not destroyed, the Court may settle a scheme for the reinstatement in whole or in part of the building, or for the transfer or conveyance of lots wholly or partially destroyed to other lot owners in proportion to their unit entitlement.

In other words, it is left to the Court, failing unanimous agreement between the lot owners, to resolve all questions of consequential rights and liabilities of the lot owners, and of the responsibility of the body corporate.

(c) Appointment of an administrator

The body corporate or any person having an interest in a lot, e.g., a mortgagee, may apply to the Court for the appointment of an administrator. The Court may in its discretion make the appointment for an indefinite period or for a fixed period on such terms and conditions as it thinks fit, the remuneration of the administrator to be an administrative expense borne rateably by the lot owners. Upon such appointment, the administrator is to have, to the exclusion of the body corporate, all its powers and duties, or such of those powers and duties as the Court shall order.

(d) Valuation, and rates and taxes

The provisions as to valuation of, and rates and taxes applicable to lots are contained in the lengthy and complicated Clause 21. These provisions represent one of the most contentious parts of the Bill. It is open to question whether they are aptly included in a Bill, the main object of which is to define and establish title to strata lots and to facilitate conveyancing in respect thereto.

The general principle is that the valuing authority values the parcel of land as a whole upon registration of the strata plan. The rating authority is to apportion such value among the lots in accordance with unit entitlement, and levy rates in respect of each lot, based on this apportionment, in all respects as if such lot constituted a quite separate allotment of land. Land tax is leviable in a different manner, according: (i) as the lots are used exclusively for residence or (ii) are not so used. In the former case, the Land Tax Commissioner apportions the valuing authority's value among the lots in accordance with unit entitlement, and levies tax on each lot based on the apportioned value, as if it were a quite separate allotment of land. In the latter case, i.e., all instances where units are not used exclusively for residence, land tax is assessed on the whole parcel of land, and tax is levied in respect of each lot in the ratio of unit entitlement to aggregate entitlement applied to the land tax on the whole parcel.

(e) Voting rights of mortgagees

Clause 24, providing for voting rights of mortgagees, gives substantial security to lending agencies. Where a lot owner's interest is subject to a registered mortgage, a power of voting conferred on him by or under the Bill is, where a unanimous resolution be required, not to be exercised by him, but by the registered mortgagee first entitled in priority, and in other cases, "*may*" be exercised by the mortgagee first entitled in priority, and shall not be exercised by the lot owner when such mortgagee is present at a meeting, personally or by proxy. It is a condition precedent of the mortgagees' exercise of such voting rights that written notice of their mortgages has been given to the body corporate.

In conclusion, some general comments may be made on the Bill. First, it is an extremely lengthy legislative measure, and the wording is by no means clear throughout. There is perhaps some justification for the views expressed by several commentators on the Bill already that it will lead to as much litigation over questions of statutory construction as has the New South Wales tenancy legislation of 1948-1958 (the *Landlord and Tenant (Amendment) Act*

1948-1958). Second, the Bill appears to have given insufficient consideration to the problems of solicitors acting for purchasers, and who may be investigating the possible existence of outstanding interests or equities. There may be serious difficulties in such investigation where the land, subdivided into strata and strata lots, is under Old System title. Third, it remains to be seen whether practitioners in New South Wales will prefer the present, relatively simple method of home unit companies, to strata titles under the Bill, which likewise involve the establishment and necessary employment of a body corporate. The former system has led to relatively little litigation. On the other hand, it is expected that finance will be much more readily available for the purchase of lots under the strata titles system, and hence this type of conveyancing should be facilitated and expedited.

CURRENT LEGISLATION

NEW SOUTH WALES

Deserted Wives and Children's Act
Amendment Bill before Parliament.

Factories and Shops Act and Local Government Act
Amendment Bill before Parliament.

Housing Act 1912
Amendment Bill before Parliament.

Local Government (Amendment) Bill before Parliament, to provide for the disqualifications of civic office; "How to Vote Cards"; rebate of rate where hardship; increase of rate-payers' advances; impounding of animals; prohibition of demolition of residential buildings without Council's consent, and other matters.

Lotteries and Art Unions Act 1901-1944
Amendment Bill before Parliament.

Public Trustee Act 1913
Amendment Bill before Parliament.

Suitors' Fund Act 1960
An Amendment Act before Parliament to widen the class of appeal dealt with by s. 6 (1), also to provide for appeals under s. 6 to include those on questions of law to the Industrial Commission of New South Wales and to a District Court or Judge, and to authorize regulations as to taxation of the costs of an appeal incurred by a respondent.

STAMP DUTY ON HIRE-PURCHASE AGREEMENTS IN SOUTH AUSTRALIA

by

L. J. DOYLE

Commissioner of Stamps, South Australia

By a recent amendment to the Stamp Duties Act, South Australia has imposed a new tax on hire-purchase agreements. This tax is in the form of a stamp duty to be denoted on agreements by either impressed or adhesive stamps.

The duty is to be assessed *ad valorem* on the amount of the "net cash price" which, in relation to a hire-purchase agreement, means the price at which the hirer might have purchased the goods for cash less the amount paid or provided by way of deposit at or before the making of the agreement.

A hire-purchase agreement is defined as a letting of goods with an option to purchase and an agreement for the purchase of goods by instalments but not including any agreement whereby the property in the goods passes at the time of the agreement or at any time before delivery. The definition also excludes an agreement in which the hirer or purchaser is a person engaged in the trade or business of selling goods of the same nature or description as the goods comprised in the agreement. Provision is also made to cover the case where by virtue of two or more agreements there is a bailment of goods and either the bailee may buy the goods or the property in the goods will or may pass to the bailee; in such a case the agreements are to be treated as a single hire-purchase agreement made at the time when the last agreement was signed.

Every hire-purchase agreement is required to be in writing and to set out the cash price, the amount paid or provided by way of deposit, and the difference between the two amounts.

The hirer of the goods is not liable for the duty which is recoverable from the owner, that is, the person who lets, hires or agrees to sell the goods.

The owner may not add the amount of any duty to any amount payable by the hirer nor may he recover it from the hirer.

Duty is to be assessed in accordance with the following scale:—

	£	s.	d.
Where the net cash price does not exceed £25	0	5	0
Where the net cash price exceeds £25 but does not exceed £50	0	10	0
Where the net cash price exceeds £50 but does not exceed £75	0	15	0
Where the net cash price exceeds £75 but does not exceed £100	1	0	0
Where the net cash price exceeds £100, for every £100 or part of £100 thereof ..	1	0	0

If the net cash price does not exceed £10, the hire-purchase agreement is exempt from duty.

The amending Act has been proclaimed to come into force on 1 February 1960.

BOOK NOTES

Western Australian Reports

This new series of Law Reports replaces the old "Western Australian Law Reports" which had been instituted in 1899. It will deal with decisions of the Supreme Court of Western Australia, and cases for reporting will be supplied to the Publishers, Butterworth & Co. (Australia) Ltd., by the Council of Law Reporting of the Law Society of Western Australia, established last year, whose Chairman is the Chief Justice, The Honourable Sir Albert Wolff, K.C.M.G. The Editor is Francis Burt, Q.C., with J. L. C. Wickham and P. H. Atkins, Barristers-at-Law, as Reporters. The citation for the new Reports is "W.A.R.".

The Journal of African Law

This is a new legal periodical issued three times a year, and published in London by Butterworth & Co. (Publishers). It is concerned with every aspect of the legal systems of Africa, and includes leading articles and news of current events, reports and notes on decided cases, legislation comments, and book reviews. The Managing Editor is Dr. A. N. Allott, Lecturer in African Law, School of Oriental and African Studies, University of London.

THE OFFICE OF CORONER IN NEW SOUTH WALES AND THE CORONER'S (AMENDMENT) ACT 1960

by

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Solicitor of the Supreme Court of New South Wales

The office of Coroner was established in New South Wales by letters patent in the year 1787 and up until this year was regulated by the *Coroner's Act* 1912,[1] which consolidated previous statutes. The office of Coroner is one of the oldest established public offices and its history can trace back to the twelfth century. The office reached the zenith of its power during the sixteenth century. However, in the thirteenth century it was described as —

"A principal guardian of the King's peace, bearing record of the pleas of the Crown, of his own views on inquests and of abjuration and outlawries. The primary object of his office appears to have been to keep watch over the profits of the Crown.

"He was bound to inquire concerning treasure trove, wreck, whales and sturgeons and to secure them to the King's use.

"The Inquest in cases of sudden death had a similar purpose to see that the Crown was not deprived of its emoluments arising from the forfeiture of the chattels of felons and outlaws.

"The Coroner alone bore record of outlawries in the county court, his presence was required whenever judgment of death was passed in a court of primary jurisdiction, appeals of felony were commenced before him and his inquest extended into cases of rape, which was from ancient time a matter of Royal Jurisdiction and consequently a profit to the Crown and in cases of wounding, which might possibly lead to death, and upon which if the wound was serious an appeal of felony might be founded."[2]

The Coroner's powers and duties were defined in the statute *de officio coronatoris* passed in the year 1276. Amongst other matters this statute laid down that the Coroner should inquire into the manner of killing and all circumstances that occasioned the party's death. From this it will be seen that the Coroner under this statute was exercising a judicial function and had the power to bring in a finding that could have a lasting effect.

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[1] Act No. 36 of 1912.

[2] *Jervis on Coroners*, 7th Edition, Introduction.

Australian Conveyancer and Solicitors Journal, June, 1960.

This power of the Coroner was maintained right up until the present day even after the *Coroner's Act* 1912, and until the year 1960 the Coroner had the right to hold a Coronial Inquiry and to bring in a finding of a specific crime against a person present before the inquiry.

Provided the Coroner had viewed the body of the deceased, it was competent to him to find that on a particular day and at a particular place John Doe had died as a result of, say, multiple head wounds there maliciously and feloniously inflicted upon him by Richard Roe and that in the circumstances Richard Roe was guilty of feloniously and maliciously murdering the said John Doe.

This finding, up until the present statute, was a permanent record at Court and upon obtaining the appropriate permission, members of the public who were entitled to inspection, were entitled to inspect and make a copy of same.

Worse than this, however, was that such a finding entailed that a record of such finding be placed on the Death Certificate of the deceased at the office of the Registrar-General.[3] This was a permanent record. This record, of course, on any occasion when the death certificate of the deceased had to be obtained, would disclose that he had been murdered by a person therein named.

This provision as to registration had another disastrous effect in that even if the person found by the Coroner to have been guilty of feloniously and maliciously murdering somebody was subsequently acquitted by a jury and even where the jury added a rider that the accused left the Court without a stain on his character, nevertheless, for all time there would stand, both in the Coroner's records and in the records of the Registrar of Births, Deaths and Marriages, a notation that the accused had in fact been found to be guilty of murder.

The present Act [4] provides that no coronial finding shall indicate in any way that any person is guilty of any indictable offence.[5]

The Act of 1960 streamlines the powers of the Coroner and takes away quite a considerable number of the powers that he formally exercised. Here it is interesting to note that since the thirteenth century the powers of the Coroner have gradually dwindled and even in the eighteenth century we find Blackstone complaining that—"through the culpable neglect of gentlemen of property, this office has been suffered to fall into disrepute and to get into low and indign hands".

[3] Registration of Births, Deaths and Marriages Act 1899-1934, s. 29.
[4] Act No. 2 of 1960.
[5] Section 29.

The 1960 Coroner's Act is taken from the English Act passed in the year 1926 and also is similar to legislation recently adopted in the Australian Capital Territory. For many years there had been an agitation to adopt the English Act and although tardy the present Act should be much appreciated.

The powers of the Coroner to inquire into matters touching the question as to whether or not the crime of murder or manslaughter has been committed have now gone for all time.[6] Where a person is charged with a crime the power of the Coroner at the present time is simply to find that the deceased died on a certain date at a certain place. This information is then forwarded to the Registrar-General so that the death may be registered.

After the trial of a person committed for trial before a Stipendiary Magistrate has concluded, the Coroner resumes his inquiry and on the resumption of the inquiry he is bound by the verdict of the jury in that he cannot bring in a finding inconsistent with the verdict of the jury.

Under the new Act, when a person is charged with murder or manslaughter he will be taken before a Stipendiary Magistrate, when evidence will be taken in the same way as evidence is taken when persons are charged with other crimes.

The strict rules of evidence will be adhered to. This is a most important reform and one long overdue, as in the past the Coroner, in holding his inquiry, was not bound by the strict rules of evidence and, before the Coroner, as is well known, it was permissible for hearsay evidence of a most damaging nature to be received and then bruited abroad and taken out to the world by the Press. Great harm was often done to a person charged with murder or manslaughter because of this failure to comply with the strict rules of evidence in the Coroner's Court.

For argument's sake, A. could say that he was told by B. that C. had found out from D. that the man before the inquiry had been of a vicious type and of a type likely to commit the crime of murder with which he stood charged and that he believed that he had threatened to kill the deceased.

This would go out, would be published in the Press, and, although the jury would later be strongly warned that they had to return their verdict according to the evidence given within the four walls of the Court in which the accused stood his trial, it was always felt that there was a

[6] Section 28 of the Act.

grave danger that the jury could subconsciously be influenced by reading the reports of evidence tendered and rightly admitted in the Coroner's Court but which under no circumstances could be admitted in a Court where the strict rules of evidence were to be applied.

The Act of 1960 also provides that even where a Coroner has commenced an inquest and during the course of the inquest he concludes that a prima facie case of murder or manslaughter has been made out, he has to adjourn his inquest and forward the papers to the Attorney-General with his view that there is a prima facie case and allow the law to take its ordinary course, resuming at the end of the criminal proceedings in the same way as he would resume at the end of the criminal proceedings where there has been a charge before a coronial inquest had been entered upon.

In similar manner to the way that the powers of the Coroner have been curtailed where there are substantive allegations that the crime of murder or manslaughter has been committed, his powers also are curtailed in the case where there are such allegations that the crime of arson has been committed.

The circumstances in which a Coroner is required to hold an inquest are set forth in Section 11 of the Act, which provides —

"(11) Where a Coroner is informed by a member of the Police Force of the death of any person whose body is lying within the State of New South Wales and who (a) has died a violent or unnatural death; (b) has died a sudden death, the cause of which is unknown; (c) has died under suspicious or unusual circumstances; (d) has died and in respect of whom a medical practitioner has not given a certificate as to the cause of death; (e) has died not having been attended by a medical practitioner within the period of three months immediately before his death; (f) has died while under or as a result of the administration of an anaesthetic administered in the course of a medical, surgical or dental operation or procedure or an operation or procedure of a like nature; (g) has died within a year and a day after the date of any accident where the cause of the death is attributable to the accident; or (h) has died in an admission centre, or mental hospital, within the meaning of the *Mental Health Act* 1958, an institution within the meaning of the *Child Welfare Act* 1939, as amended by subsequent Acts, or a prison within the meaning of the *Prisons Act* 1952, as amended by subsequent Acts, or in any lockup or otherwise whilst in the lawful custody of any member of the Police Force."

The Coroner has the power to dispense with an inquest and this is a worthwhile power, because it can save considerable embarrassment, anxiety and worry to the relatives of the deceased.

However, there is a right given to the relatives of the deceased who may be dissatisfied with respect to the treatment given to the deceased and may require that an inquest be held and in this way, within fourteen days of the date of death, it is open to them to request the Coroner to hold an inquest, in which case he must do so.[7]

One of the bases upon which the jurisdiction of the Coroner was founded in the past was that he had a view of the body. Under the 1960 Act it is not necessary that he have a view of the body.[8]

The whole system of the Act, apart from the matters above referred to, is merely a streamlining and a clarification of what has been the law for some time.

It is interesting to note that the *Coroner's Act* 1912-1954, which is totally repealed by the present Act, contains 22 clauses, whereas the present Act contains 46 clauses.

Although under the 1960 Act the Coroner will be performing a function that is no longer judicial but largely administrative, his office will none the less be still a most important one.

Although he will not be able to carry out, as previously, investigation as to the cause of death where there is an allegation that a crime has been committed, he can still, and is required still, to carry out an investigation as mentioned in Section 11 of the Act.

These investigations being open to the public can draw attention to matters that led to the death, that could lead to improvements being made in factories and precautions taken that death shall not occur in similar circumstances in the future.

They can also, in the case of dissatisfied relatives, serve to clarify their minds and rid their minds of what may have been a completely unfounded suspicion. The coronial inquests also will be a permanent record as to the cause of death and will be of assistance to the authorities generally.

All facts surrounding the death of persons where there is no charge and no investigation required as to a criminal matter will be brought out into the open.

Accordingly, Blackstone's fear above quoted will not be realized and the office of Coroner will still be occupied by men of high repute having the qualifications of Stipendiary Magistrate and performing a very useful function in the administration of justice in the community.

[7] Section 11 (2) (*c*).

[8] Section 15.

ELEVENTH DOMINION LEGAL CONFERENCE

This Conference was held on April 20 and 21, 1960, in Wellington. Amongst those present were The Lord High Chancellor, Viscount Kilmuir of Creich, P.C., G.C.V.O., and Lady Kilmuir; Mr. Herman Phleger, an eminent United States lawyer, and Mrs. Phleger; Mr. Francis H. Russell, the United States Ambassador, in his capacity as a member of the American Bar Association, and Mrs. Russell; Mr. H. A. R. Snelling, Q.C., Solicitor-General for New South Wales, and Mrs. Snelling; Mr. A. Heymanson, Secretary of the Victorian Law Institute; Mr. E. R. Henry, Hobart; Mr. Bruce Roberts, Adelaide; Miss S. E. Offer, Perth; Mr. and Mrs. R. R. Marsh, Melbourne; Dr. B. A. Helmore, Newcastle.

On Tuesday a reception and cocktail party was given by the Administrator of New Zealand, Sir Harold Barrowclough, at Government House.

The Conference was opened with a civic welcome in the Wellington Town Hall, when an address of welcome was given by His Worship the Mayor of Wellington, Mr. F. J. Kitts, M.P. Addresses were also given by the President of the Wellington District Law Society, Mr. H. R. C. Wild, Q.C., Solicitor-General, and the President of the New Zealand Law Society, Mr. D. Perry. The inaugural address was given by the Lord High Chancellor, entitled "Judicial Qualities". The Attorney-General, the Hon. H. G. R. Mason, Q.C., thanked the Lord Chancellor.

In the afternoon, papers were read on "Family Trusts" and "The Changing Face of Administrative Law". In the evening the Conference Dinner was held in Lower Hutt.

Thursday morning was devoted to an address by Mr. Herman Phleger on "The Judicial Settlement of International Disputes and the Rule of Law", followed by a paper on "A New Look at Legal Education". An open forum was held in the afternoon, when such questions as "The Compromise of Damages in a Divorce Suit", "Trade Practices Legislation", "Some Aspects of the Crimes Bill", and "The Fidelity Fund" were discussed. The closing address was given by Mr. D. Perry, the President of the New Zealand Law Society. In the evening private hospitality was given in Wellington practitioners' homes, followed by the Conference Ball at Lower Hutt.

The ladies were entertained with a buffet dinner and mannequin parade on Wednesday and morning tea on Thursday at Wellington Town Hall, followed by a drive around Wellington.

Friday was devoted to sport, with two men's golf tournaments, a ladies' golf tournament, men's bowls, and ladies' and men's tennis. The closing ceremony was held at the Wellington Golf Club, Heretaunga. Mr. H. A. R. Snelling, Q.C., spoke on behalf of the overseas visitors.

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